



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4812 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

MEMORIAL HERMANN HOSPITAL SYSTEM
3200 SW FREEWAY SUITE 2200
HOUSTON TX 77027

Carrier's Austin Representative Box

42

MFDR Date Received

December 14, 2004

Respondent Name

SERVICE LLOYDS INSURANCE CO

MFDR Tracking Number

M4-06-1412-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated December 13, 2004: "The hospital contacted the carrier on several occasions to obtain precertification and coordinated with Dr. Francis' office for precertification. On December 29, 2003, the carrier denied precertification on the basis that the treatment was not medically necessary." "It is the hospital's position that the hospitalization and surgery were in fact medically necessary and the charges exceeded the stop-loss threshold for reimbursement at 75% of billed charges."

Requestor's Supplemental Position Summary Dated May 12, 2004: "Our firm represents Memorial Hermann Hospital System. Enclosed please find a copy of the final decision received from the Houston West Field Office of Texas Workers' Compensation Commission where it was determined that there is no medical dispute concerning compensability."

Letter from the Division to the Requestor dated May 4, 2005: "The surgery was denied by preauthorization, therefore a TWCC-60 will need to be submitted to TWCC Medical Review. There is no extent issue on the compensable injury of the spine."

Requestor's Position Summary Dated January 31, 2006: "Pursuant to our telephone conversation on today's date, please consider this letter as Memorial Hermann Hospital System's request to withdraw its medical necessity request and tracking # M5-05-3052-01."

Requestor's Supplemental Position Summary Dated June 9, 2006: "We are requesting that you consider the medical opinion of the treating physician. Dr. Richard Francis opining that the surgery was medically necessary and an emergency."

Requestor's Supplemental Position Summary Dated November 10, 2008: "This letter is in response to your request for documents on the above referenced medical dispute. At the time I filed the medical dispute, I requested and IRO based upon medical necessity because the hospital did not obtain preauthorization from Service Lloyds. Please let me know whether you will be dismissing the MDR and requesting an IRO."

Requestor's Supplemental Position Summary Dated November 10, 2011 and November 30, 2011:

"The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method". "Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement of \$50,075.25."

Affidavit of Michael C. Bennett dated November 1, 2011: "I am the System Executive of Patient Business Services for Memorial Hermann Healthcare System (the 'Hospital')." "The charges reflected on the attached Exhibit A are the usual and customary fees charged for like or similar services and do not exceed the fees charged for similar treatment of an individual of an equivalent standard of living and paid by someone acting on that individual's behalf." "On the dates stated in the attached records, the Hospital provided services to this patient who incurred the usual and customary charges in the amount of \$66,767.00 which is a fair and reasonable rate for the services and supplies provided during this patient's hospitalization. Due to the nature of the patient's injuries and need for surgical intervention, the admission required unusually costly services."

Affidavit of Patricia L. Metzger dated November 21, 2011: "I am the Chief of Care Management for Memorial Hermann Healthcare System (the 'Hospital')." "Based upon my review of the records, my education, training, and experience in patient care management, I can state that based upon the patient's diagnosis and extent of injury, the services and procedures performed on this patient were complicated and unusually extensive."

Amount in Dispute: \$50,075.25

RESPONDENT'S POSITION SUMMARY

Respondent's Packet Dated December 21, 2004: "Harris & Harris represents Service Lloyds Insurance in this matter."

Response Submitted by: Harris & Harris, Attorneys At Law, P.O. Box 162443 Westlake Station, Austin, TX 78716

Respondent's Supplemental Position Summary Dated July 29, 2005: "Harris & Harris represents Service Lloyds Insurance in this matter."

Response Submitted by: Harris & Harris, Attorneys At Law, P.O. Box 162443 Westlake Station, Austin, TX 78716

Respondent's Supplemental Position Summary Dated June 27, 2006: "Subject to dismissal of the dispute, Respondent maintains its position as outlined in its audited bills and asserts Requestor should receive no additional reimbursement for the services made the basis of this medical dispute. The Respondent has paid all reasonable and necessary charges relating to the compensable injury and no additional amounts are due the Requestor at this time. Additionally, Requestor has failed to justify its entitlement to any additional fees on this dispute. The Respondent's audit of these bills was correct and in accordance with the Fee Guidelines in effect at the time of the review."

Response Submitted by: Harris & Harris, Attorneys At Law, 5900 Southwest Parkway Building II, Suite 100, Austin, Texas 78735

Respondent's Supplemental Position Summary Dated September 9, 2011: "A provider must demonstrate that the services it has provided are unusually costly and unusually extensive. *Id.* at 553. Memorial Hermann Hospital System has not demonstrated that the services they provided were, in fact, unusually costly and unusually extensive. Because of this, Memorial Hermann Hospital System is not entitled to reimbursement under the Stop-Loss Exception."

Response Submitted by: Harris & Harris, Attorneys At Law, 5900 Southwest Parkway Building II, Suite 100, Austin, Texas 78735

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
December 15, 2003 through December 19, 2003	Inpatient Hospital Services	\$50,075.25	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
4. 28 Texas Administrative Code §134.600, 27 *Texas Register* 12359, effective January 1, 2003, requires preauthorization for specific treatments and services.
5. 28 Texas Administrative Code §133.1, 25 *Texas Register* 2115, effective July 15, 2000, defines an emergency.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- G – Unbundling.
- Z- Preauthorization requested and denied.
- R- Extent of injury.
- A – Preauthorization required/not requested.

Issues

1. Does an extent of injury issue exist in this dispute?
2. Does a preauthorization issue exist in this dispute?
3. Did the audited charges exceed \$40,000.00?
4. Did the admission in dispute involve unusually extensive services?
5. Did the admission in dispute involve unusually costly services?
6. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent

reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. According to the explanation of benefits, the respondent denied reimbursement based upon "R- Extent of injury". On May 4, 2005, the Division wrote the requestor that "The surgery was denied by preauthorization, therefore a TWCC-60 will need to be submitted to TWCC Medical Review. There is no extent issue on the compensable injury of the spine." Therefore, the Division finds that the respondent did not maintain the extent denial; therefore, the extent of injury denial is not supported.
2. According to the explanation of benefits, the respondent denied reimbursement for dates of service December 15, 2003 through December 19, 2003 based upon "Z- Preauthorization requested and denied, and A – Preauthorization required/not requested".

28 Texas Administrative Code §134.600(h) states "The non-emergency health care requiring preauthorization includes: (1) inpatient hospital admissions including the principal scheduled procedure(s) and the length of stay."

On March 31, 2005, the surgeon Richard Francis, M.D., wrote, "I recommended immediate revision of his low back fusion with repair of the pseudarthrosis and re-instrumentation of his spine. We submitted a request for surgery on the 10th of December 2003 with a date for surgery on the 15th of December 2003. It was important to bring his surgery forward as he had worsening pain and was significantly incapacitated. His pain had escalated to the point where he would have required hospitalization under my care to obtain pain control as an inpatient. On the strength of the studies before us and the clinical picture, I felt it was imperative to proceed with his surgery on the morning of the 15th of December 2003. On that very morning, we received notification that his surgery was denied."

28 Texas Administrative Code §134.600(b) states "The carrier is liable for all reasonable and necessary medical costs relating to the health care required to treat a compensable injury: (1) listed in subsection (h) or (i) of this section, only when the following situations occur: (A) an emergency, as defined in §133.1 of this title (relating to Definitions); (B) preauthorization of any health care listed in subsection (h) of this section was approved prior to providing the health care."

28 Texas Administrative Code §133.1(a)(7) defines an emergency as "Either a medical or mental health emergency as described below: (A) a medical emergency consists of the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health and/or bodily functions in serious jeopardy, and/or serious dysfunction of any body organ or part."

The Division finds that Dr. Francis wrote that he saw the claimant on December 10, 2003 and planned and performed the surgery on December 15, 2003. A five day delay from examination to planned surgery does not meet the definition of medical emergency per 28 Texas Administrative Code §133.1(a)(7)(A).

The requestor did not submit a preauthorization report to support that the inpatient hospital stay was preauthorized in accordance with 28 Texas Administrative Code §134.600(h)(1). Therefore, a preauthorization issue does exist in this dispute.

3. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$66,767.00. The Division concludes that the total audited charges exceed \$40,000.
4. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The Third Court of Appeals' November 13, 2008 opinion states that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services" and further states that "...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases." The requestor in its original position statement states that "Due to the nature of the patient's extensive back surgery and post operative course, the patient required unusually extensive services and medical supplies during his stay. The patient remained hospitalized for a period of 5 days post operatively." "Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges." This position

does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. In its supplemental position statement, the requestor asserts that: "This patient underwent a posterior stabilization and fusion over the L4-5 area with pseudoarthrosis repair and re-fusion at the L5-S1 area. The nature of these procedures are inherently unusually extensive." In support of the requestor's position that the services rendered were unusually extensive, the requestor submitted affidavits from the System Executive of Patient Business Services for Memorial Hermann Healthcare System, and from the Chief of Care Management for Memorial Hermann Healthcare System. The requestor's supplemental position and affidavits failed to meet the requirements of §134.401(c)(2)(C) because the requestor does not demonstrate how the services in dispute were unusually extensive compared to similar spinal surgery services or admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).

5. 28 Texas Administrative Code §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor's position statements, nor the affidavits provided demonstrate how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
6. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." The length of stay was four days; however, documentation supports that the requestor did not obtain preauthorization in accordance with 28 Texas Administrative Code Rule §134.600. Consequently, reimbursement cannot be recommended.

The division concludes that the total allowable for this admission is \$0.00. The respondent issued payment in the amount of \$0.00. Based upon the documentation submitted no reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	_____ 12/7/2012 Date
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_____ Signature	_____ Medical Fee Dispute Resolution Manager	_____ 12/7/2012 Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.